

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

COREY D. TURNER,

Defendant-Appellee.

UNPUBLISHED

February 26, 1999

No. 203297

Recorder's Court

LC No. 96-006792

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

The people appeal by right from an order of the trial court granting defendant youthful trainee status under the Youthful Trainee Act (YTA), MCL 762.11 *et seq.*; MSA 28.853(11) *et seq.*, and placing defendant on probation based upon defendant's bench trial misdemeanor conviction of misdemeanor assault and battery, MCL 750.81; MSA 28.276. We reverse and remand for resentencing.

On appeal, plaintiff argues that the trial court erred in finding defendant eligible for YTA status, because the YTA only applies to defendants convicted upon a plea of guilty. We agree. This Court has repeatedly held that defendants who do not plead guilty are ineligible for youthful trainee status under the YTA. *People v Harns*, 227 Mich App 573, 579-580; 576 NW2d 700, vacated in part on other grounds 459 Mich 892 (1998) (defendant convicted on plea of nolo contendere ineligible); *People v Dash*, 216 Mich App 412, 414; 549 NW2d 76 (1996) (defendant convicted upon bench trial ineligible). Unfortunately, none of these cases were cited by plaintiff during the proceedings below.

Although defendant was ultimately convicted of a lesser misdemeanor offense, instead of a lesser felony, as in *Dash, supra*, this is a distinction without a difference. In *Harns, supra*, this Court explained that the purpose behind the guilty plea requirement is to restrict the YTA program to youths who demonstrate a measure of willingness to accept responsibility for their conduct by pleading guilty, in order to further the rehabilitative goals of the act. 227 Mich App at 579. Here, there is nothing in the record to suggest that defendant ever indicated any willingness to accept responsibility for any felony or misdemeanor offense prior to being found guilty of the lesser included offense of assault and battery.

We are also unpersuaded by defendant's argument that the guilty plea requirement of the YTA is unconstitutional as a violation of the equal protection clauses of the Michigan and United States constitutions, given the relationship of that requirement to the rehabilitative goals of the YTA recognized in *Harns, supra*. Moreover, even if we were persuaded that the guilty plea restriction violates the equal protection clause, it is questionable whether extending the scope of the YTA to persons not convicted by guilty plea would be an appropriate remedy in light of the legislative intent. See *Heckler v Mathews*, 465 US 728, 738; 104 S Ct 1387; 79 L Ed 2d 646 (1984); 16B Am Jur 2d, Constitutional Law, § 807.

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff